

I

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H. R. 300

To establish a National Foreign Investment Control Commission to prohibit or restrict foreign ownership control or management control, through direct purchase, in whole or part; from acquiring securities of certain domestic issuers of securities; from acquiring certain domestic issuers of securities, by merger, tender offer, or any other means; control of certain domestic corporations or industries, real estate, or other natural resources deemed to be vital to the economic security and national defense of the United States.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. ROE introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Investment Con-
4 trol Act of 1983".

5 SEC. 2. (a) The Congress finds that recent international
6 economic and monetary changes have stimulated investment
7 by foreign persons in industries and real property in the
8 United States. If such investment becomes excessive it may
9 endanger the United States national security and/or econom-
10 ic security and the United States control of its vital economic
11 and natural resources. Therefore, it is the purpose of this Act
12 to safeguard certain United States corporations and natural
13 resources from foreign ownership or management control by
14 placing limitations and restrictions on certain investments by
15 foreign persons.

16 (b) The Congress declares that the provisions of this Act
17 shall not be construed to discourage efforts by the Depart-
18 ment of Commerce to promote foreign investment in areas of
19 the American economy which are not regulated by this Act.

20 SEC. 3. There is established a commission to be known
21 as the National Foreign Investment Control Commission
22 (hereinafter in this Act referred to as the "Commission").

23 SEC. 4. In accordance with sections 8 and 9, the Com-
24 mission shall—

1 (1) prohibit any person (A) who is not a citizen of
2 the United States, or (B) who is owned or controlled
3 by a person who is not a citizen of the United States,
4 from acquiring, directly or indirectly, right, title, or in-
5 terest in any voting security of any issuer involved in
6 interstate commerce if the Commission determines that
7 such issuer is substantially involved in any area essen-
8 tial to our national security and/or economic security,
9 such as nuclear energy, radioactive minerals, petroleum
10 or hydrocarbons, basic petrochemicals, power genera-
11 tion or distribution, wireless or telegraphic communica-
12 tions, forestry operations, domestic air or maritime op-
13 erations, urban or interurban automotive or rail trans-
14 port, strategic resources or defense materials, or cer-
15 tain real property to be identified by the Commission
16 (as long as any such area remains essential to our na-
17 tional security and/or economic security); and

18 (2) prohibit any person included in clause (A) or
19 (B) of paragraph (1) from acquiring, directly or indi-
20 rectly, any right, title, or interest in any voting secu-
21 rity of any issuer involved in interstate commerce if the
22 Commission determines that such issuer is substantially
23 involved in any area important to our national security
24 and/or economic security, such as certain strategic
25 minerals determined by the Commission, steel, fuel dis-

1 tribution, secondary petrochemicals, drugs, pharmaceu-
2 ticals, radio or television, or any other field determined
3 by the Commission (as long as any such area remains
4 important to our national security and/or economic se-
5 curity). The Commission may only prohibit an acquisi-
6 tion under this paragraph if it determines that after the
7 acquisition by such person all persons described in
8 clauses (A) and (B) of paragraph (1) own more than 49
9 per centum of all voting securities of such issuer (or
10 more than a lower percentage of such securities of an
11 issuer if the Commission determines that such lower
12 percentage gives all persons described in such clauses
13 effective management control of the issuer).

14 For the purposes of this section, acquiring a voting security
15 indirectly includes acquiring such security through a street
16 name, nominee, or other third party. In carrying out its au-
17 thority under this section, the Commission shall (to the
18 extent possible) include public and private corporations which
19 issue securities but which are not registered under section 12
20 of the Securities Exchange Act of 1934, partnerships, and
21 other persons.

22 SEC. 5. (a) The Commission shall be composed of seven
23 members—

24 (1) The Secretary of State (or his delegate),

25 (2) The Secretary of Defense (or his delegate),

1 (3) The Secretary of Labor (or his delegate),

2 (4) The Secretary of Commerce (or his delegate),

3 (5) The Secretary of the Treasury (or his
4 delegate),

5 (6) the Secretary of Energy (or his delegate), and

6 (7) the Chairman of the Council of Economic Ad-
7 visers (or his delegate). A vacancy in the Commission
8 shall be filled in the manner in which the original ap-
9 pointment was made.

10 (b) Members of the Commission shall be full-time offi-
11 cers or employees of the United States and shall receive no
12 additional pay on account of their services on the
13 Commission.

14 (c) Four members of the Commission shall constitute a
15 quorum, but a lesser number may hold hearings.

16 (d) The Chairman of the Commission shall be a member
17 of the Commission and shall be elected by the members of the
18 Commission. The term of office of the Chairman shall be two
19 years, and he may be elected more than once.

20 (e) The Commission shall meet once every three
21 months, or more frequently at the call of the Chairman or a
22 majority of its members.

23 SEC. 6. (a) The Commission shall have a Director who
24 shall be appointed by the Chairman of the Commission with

1 the advice and consent of the majority members of the
2 Commission.

3 (b) Subject to such rules as may be adopted by the Com-
4 mission, the Director may, subject to the approval of the
5 Commission, appoint and fix the pay of such personnel as he
6 deems necessary.

7 (c) The Director and staff of the Commission may be
8 appointed without regard to the provisions of title 5 of the
9 United States Code, governing appointments in the competi-
10 tive service, and such staff may be paid without regard to the
11 provisions of chapter 51 of subchapter III of chapter 53 of
12 such title relating to classification and General Schedule pay
13 rates.

14 (d) Subject to such rules as may be adopted by the Com-
15 mission, the Director may procure temporary and intermit-
16 tent services to the same extent as is authorized by section
17 3109(b) of title 5 of the United States Code.

18 (e) Upon request of the Commission, the head of any
19 Federal agency is authorized to detail, on a reimbursable
20 basis, any of the personnel of such agency to the Commission
21 to assist it in carrying out its duties under this Act.

22 SEC. 7. (a) The Commission may for the purpose of car-
23 rying out this Act hold such hearings, sit and act at such
24 times and places, take such testimony, and receive such evi-
25 dence, as the Commission may deem advisable. The Commis-

1 sion may administer oaths or affirmations to witnesses ap-
2 pearing before it.

3 (b) When so authorized by the Commission, any member
4 or agent of the Commission may take any action which the
5 Commission is authorized to take by this section.

6 (c) The Commission may secure directly from any de-
7 partment or agency of the United States information neces-
8 sary to enable it to carry out this Act. Upon request of the
9 Chairman of the Commission, the head of such department or
10 agency shall furnish such information to the Commission.

11 (d) The Commission may use the United States mails in
12 the same manner and upon the same conditions as other de-
13 partments and agencies of the United States.

14 SEC. 8. (a) Within one hundred and eighty days after
15 the date of enactment of this Act, and at the end of each six-
16 month period thereafter, the Commission shall determine and
17 notify each issuer which is substantially involved in any area
18 essential to the United States national security and/or eco-
19 nomic security, as described in section 4(1), and each issuer
20 which is substantially involved in any area important to the
21 United States national security and/or economic security, as
22 described in section 4(2). The Commission shall publish in the
23 Federal Register the names of all issuers so determined
24 under the preceding sentence. Each such issuer shall submit
25 to the Commission (within sixty days after receiving notifica-

1 tion from the Commission) the names and nationalities of all
2 individuals not citizens of the United States, and the names
3 of all persons other than individuals, who own voting securi-
4 ties of such issuer. The Commission shall determine which of
5 such persons who are not individuals are owned or controlled
6 by a person who is not a citizen of the United States.

7 (b) Within a period of sixty days after an issuer receives
8 notification from the Commission under subsection (a), any
9 person which has title to or otherwise controls any right,
10 title, or interest in any voting securities of any such issuer for
11 an individual who is not a United States citizen shall submit
12 to the Commission the name and nationality of each such
13 individual, as the owner such voting security. Within such
14 sixty-day period, any person who has title to or otherwise
15 controls any right, title, or interest in any voting security of
16 any such issuer for a person who is not an individual shall
17 submit to the Commission the name of such person and the
18 name of the issuer in which such person has such voting se-
19 curity. The Commission shall determine which of such per-
20 sons are owned or controlled by a person who is not a citizen
21 of the United States.

22 (c) The Commission shall order (1) each individual
23 whose name was submitted under subsection (a) or (b), and
24 (2) each person which the Commission under subsection (a) or
25 (b) determines is owned or controlled by a person not a citi-

1 zen of the United States, who owns any right, title, or inter-
2 est in any voting security of any issuer substantially involved
3 in any area essential to our national security and/or econom-
4 ic security, to sell (within a period of sixty days after such
5 order) all such securities to any citizen of the United States,
6 or (with the Commission's prior approval) to any person not
7 included in section 4(1)(B).

8 (d) The Commission shall order each individual and
9 person included in clauses (1) and (2) of subsection (c), who
10 owns any right, title, or interest in any voting security of any
11 issuer substantially involved in any area important to our na-
12 tional security and/or economic security, to sell (within a
13 period of sixty days after such order) to any citizen of the
14 United States, or (with the Commission's prior approval) to
15 any person not included in section 4(1)(B), the following se-
16 curities of such issuer: a number of securities owned by such
17 individual or person which is such individual's or person's pro
18 rata share of the amount of securities the Commission deter-
19 mines must be sold under this subsection so that persons in-
20 cluded in section 4(1) (A) and (B) own not more than 49 per
21 centum of all right, title, or interest in any voting securities
22 of such issuer (or not more than a lower percentage of such
23 voting securities if the Commission determines that any
24 amount greater than such lower percentage for such issuer

1 gives all persons described in section 4(1) (A) and (B) effective
2 management control of such issuer).

3 (e) The Commission shall issue orders under subsections
4 (c) and (d) within a period, with respect to any issuer, of
5 ninety days after such issuer (and each person under subsection
6 (b)) submits to the Commission the names and nationalities
7 of individuals under subsections (a) and (b) and after the
8 Commission makes each determination required by the last
9 sentence of subsections (a) and (b). The seller of any security
10 under subsection (c) or (d) shall transmit documents of the
11 sale, and the name of the purchaser in each sale, to the
12 Commission.

13 SEC. 9. (a) On the day that the Commission notifies
14 each issuer under section 8(a), and thereafter at the end of
15 each six-month period under section 8(a), the Commission
16 shall transmit to the Securities Exchange Commission a list
17 of issuers it includes in its determination under the first sentence
18 of section 8(a), and shall publish each such list in the
19 Federal Register. The Commission shall also transmit such
20 list to the following three bodies: the Comptroller of the Currency,
21 the Board of Governors of the Federal Reserve System, and the Federal
22 Deposit Insurance Corporation. Each such body shall transmit such list
23 to all the banks over which such body has jurisdiction pursuant to
24 section 12(i) of the Securities Exchange Act of 1934. The Securities Ex-
25

1 change Commission shall transmit each such list to all bro-
2 kers and dealers registered under section 15 or 15A of the
3 Securities Exchange Act of 1934. Each such broker, dealer,
4 and bank—

5 (1) shall not sell to any individual who is not a
6 citizen of the United States any right, title, or interest
7 in any security of an issuer on the list which is sub-
8 stantially involved in any area essential to our national
9 security and/or economic security;

10 (2) shall contact the Commission for approval
11 before it sells to any person who is not an individual
12 (or to any individual acting as an agent for such a
13 person) any right, title, or interest in any security of an
14 issuer on the list which is substantially involved in any
15 area essential to our national security and/or economic
16 security; and

17 (3) shall inform the Commission immediately after
18 it sells to any person any right, title, or interest in any
19 security of an issuer on the list which is substantially
20 involved in any area important to our national security
21 and/or economic security.

22 The Commission shall only approve a sale under paragraph
23 (2) if it determines that the purchaser is not owned or con-
24 trolled by a person who is not a citizen of the United States.

1 (b) After each list of issuers under subsection (a) is pub-
2 lished in the Federal Register—

3 (1) no person shall purchase, on behalf of any in-
4 dividual who is not a citizen of the United States, any
5 right, title, or interest in any security of an issuer on
6 the list which is substantially involved in any area es-
7 sential to our national security and/or economic secu-
8 rity;

9 (2) each person shall contact the Commission for
10 approval before it purchases on behalf of any person
11 who is not an individual (or on behalf of any individual
12 acting as an agent for such a person) any right, title,
13 or interest in any security of an issuer on the list
14 which is substantially involved in any area essential to
15 our national security and/or economic security; and

16 (3) each person shall inform the Commission im-
17 mediately after it purchases on behalf of any person
18 any right, title, or interest in any security of an issuer
19 on the list which is substantially involved in any area
20 important to our national security and/or economic se-
21 curity.

22 The Commission shall only approve a purchase under para-
23 graph (2) of this subsection if it determines that the person on
24 behalf of whom the purchase is made is not owned or con-
25 trolled by a person who is not a citizen of the United States.

1 (c) The Commission shall monitor on a daily basis each
2 issuer on the list which is substantially involved in any area
3 important to our national security and/or economic security.
4 When the Commission's percentage determination under sec-
5 tion 4(2) is exceeded for any issuer, the Commission shall
6 order all persons included in section 4(1) (A) and (B) to sell,
7 pursuant to the following sentence, any right, title, or inter-
8 est in any securities in such issuer that such persons pur-
9 chased after such percentage determination is exceeded.
10 Each such person shall sell any right, title, or interest in any
11 securities under the preceding sentence (i) to a person not
12 included in section 4(1) (A) or (B), and (ii) in an amount
13 which the Commission determines is his pro rata share of all
14 securities of such issuer which must be sold so that its per-
15 centage determination under section 4(2) is not exceeded for
16 such issuer.

17 (d) After each list of issuers under subsection (a) is pub-
18 lished in the Federal Register, until the requirements of this
19 subsection are complied with the Securities Exchange Com-
20 mission shall delay the effectiveness of the registration state-
21 ment for any merger or proxy solicitation involving any
22 issuer on such list, any sale of assets of any issuer on such
23 list, or any other acquisition of any such issuer for which a
24 registration statement must be filed with the Securities Ex-
25 change Commission. The Securities Exchange Commission

1 shall notify the Commission established under this Act of the
2 person attempting to acquire such issuer. If the Commission
3 determines (1) that the person attempting to acquire the
4 issuer is owned or controlled by a person who is not a United
5 States citizen, and (2) that the issuer sought to be acquired is
6 substantially involved in an area essential to the United
7 States national security and/or economic security, the Secu-
8 rities Exchange Commission shall not make effective the reg-
9 istration statement for such acquisition of the issuer. If the
10 Commission determines (1) that the person attempting to ac-
11 quire the issuer is owned or controlled by a person who is not
12 a United States citizen, and (2) that the issuer sought to be
13 acquired is substantially involved in an area important to the
14 United States national security and/or economic security, the
15 Securities Exchange Commission may only make effective
16 the registration statement for any acquisition of the issuer if
17 the Commission determines that the acquisition does not
18 exceed the Commission's percentage determination under
19 section 4(2) for that issuer.

20 (e) After each list of issuers under subsection (a) is pub-
21 lished in the Federal Register, any person acquiring any
22 issuer on such list—

23 (1) by tender offer to the shareholders of any such
24 issuer, or

1 (2) by any other means of acquisition, including
2 any means for which a registration statement does not
3 have to be filed with the Securities Exchange Commis-
4 sion;
5 shall file a statement with the Securities Exchange Commis-
6 sion not later than ten days before it may so acquire such
7 issuer. However, such person may only acquire such issuer if
8 the Commission approves the acquisition pursuant to this
9 subsection. The statement filed with the Securities Exchange
10 Commission shall not be a public document. The Securities
11 Exchange Commission shall transmit to the Commission es-
12 tablished under this Act each statement filed with it pursuant
13 to this subsection. If the Commission determines (1) that the
14 person attempting to acquire the issuer is owned or con-
15 trolled by a person who is not a United States citizen, and (2)
16 that the issuer sought to be acquired is substantially involved
17 in an area essential to the United States national security
18 and/or economic security, the Commission shall not approve
19 such acquisition of the issuer. If the Commission determines
20 (1) that the person attempting to acquire the issuer is owned
21 or controlled by a person who is not a United States citizen,
22 and (2) that the issuer sought to be acquired is substantially
23 involved in an area important to the United States national
24 security and/or economic security, the Commission shall only
25 approve such acquisition of the issuer if it determines that the

1 acquisition does not exceed the Commission's percentage de-
2 termination under section 4(2) for that issuer.

3 (f) In determining the list of issuers under the first sen-
4 tence of section 8(a), the Commission shall coordinate its ac-
5 tivities with any other Federal agency whose activities ac-
6 complish any of the purposes of this Act.

7 SEC. 10. Within a period of one hundred and eighty
8 days after the date of enactment of this Act, the Commission
9 shall determine which minerals, fertile realty for agriculture,
10 timber lands, and other resources are to be included in a list
11 of resources which are strategic to the national security and/
12 or economic security of the United States. The Commission
13 shall publish such list in the Federal Register. After such list
14 is so published, if any seller or lessor of real estate located in
15 the United States, or his agent, knows or has reason to know
16 that such real estate contains resources on such list in com-
17 mercially exploitable amounts, he shall not sell or lease such
18 real estate to any individual who is not a citizen of the
19 United States, or to such individual's agent. The seller or
20 lessor of any such real estate, or his agent, shall notify the
21 Commission before it sells or leases any such real estate to a
22 person who is not an individual, or to any other person acting
23 as an agent for such a person. The seller or lessor may only
24 sell or lease such real estate to such person or his agent if the
25 Commission informs him that such person is owned or con-

1 trolled by a person who is a citizen of the United States. The
2 Commission may from time to time alter such list of re-
3 sources which are strategic to the national security and/or
4 economic security of the United States.

5 SEC. 11. (a) Whoever fails to comply with any require-
6 ment contained in section 8, 9, 10, or 12 of this Act shall be
7 fined not more than \$10,000 for each such failure.

8 (b) Whenever an individual who is not a citizen of the
9 United States or a person who is owned or controlled by a
10 person who is not a citizen of the United States purchases (1)
11 any voting security of an issuer on the list established by the
12 Commission under the first sentence of section 8(a) in viola-
13 tion of this Act, or (2) any real estate in violation of section
14 10, such individual or person shall (in addition to the fine
15 imposed by subsection (a)) sell such security or real estate to
16 a United States citizen or to a person owned or controlled by
17 a United States citizen within ninety days after the imposi-
18 tion of such fine.

19 SEC. 12. In addition to the information retained by the
20 Commission concerning voting securities owned in issuers in-
21 cluded under section 4(2) by individuals who are not United
22 States citizens and by persons who are owned or controlled
23 by persons who are not United States citizens, the Commis-
24 sion shall require (within ninety days after the date of enact-
25 ment of this Act) that all such individuals and persons report

1 to it concerning voting securities they hold in any corporation
2 incorporated in any State, concerning any real estate they
3 own in the United States, and concerning any other interest
4 in any other United States person that they own or control.
5 Each such person and individual, pursuant to procedures that
6 the Commission adopts, shall report to the Commission im-
7 mediately after it acquires any voting securities in any such
8 corporation, acquires any such real estate, or acquires any
9 other such interest. All such information acquired under this
10 section shall be retained in a National Registry of Foreign
11 Investment. Such information shall be used for policy making
12 and statistical purposes by the Commission and shall be con-
13 fidential, except that the Commission may make it available
14 to any Federal or State agency for informational purposes
15 only for such agency.

16 SEC. 13. For the purposes of this Act—

17 (1) the term “issuer” has the same meaning as
18 such term is defined in section 3(a)(8) of the Securities
19 Exchange Act of 1934; and

20 (2) the term “United States” means the various
21 States, the District of Columbia, Guam, American
22 Samoa, and the Virgin Islands.

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